

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 27, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 08MD-151

Maui

Issuance of Direct Land License to the County of Maui, Department of Environmental Management for Removal of Cinder and Soil Purposes and Issuance of a Right-of-Entry to the County of Maui, Department of Environmental Management; Wakiu and Kawaipapa, Hana, Maui Tax Map Key: (2) 1-3-004:012 portion.

APPLICANT:

County of Maui, Department of Environmental Management

LEGAL REFERENCE:

Section 171-54 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Wakiu and Kawaipapa, Hana, Maui; identified by Tax Map Key: (2) 1-3-004:012 portion, as shown on the attached map labeled Exhibit A.

AREA:

90 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Maui CZO:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _ NO X

CURRENT USE STATUS:

Vacant and unencumbered.

The County of Maui received Land Board approval on June 25, 1976 and March 24, 1977. The County signed the Land License document and returned it to the Department. For whatever reason, the Land License document was never executed by the Chairperson. Since 1976 the County of Maui continued to occupy the 90 acre State property and excavated cinder from the cinder pit without a fully executed Land License document from the Department.

CHARACTER OF USE:

Removal of cinder and soil.

LIMITS ON REMOVAL

Minimum of 150 cubic yards per week.

LICENSE TERM:

20 years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ROYALTY:

Gratis

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or

topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for the costs of public notice pursuant to section 171-16.

BACKGROUND:

The Land Board at its meeting of June 25, 1976, under agenda Item F-1, approved the issuance of a Revocable Permit to the County of Maui, Department of Public Works for removal of cinder and dirt material. The licensed area is approximately 90 acres within a 743.333 acre State parcel. Materials (mixture of cinder and dirt) are to be used for the road maintenance and sanitary landfill operations in the Hana community. Consideration would be gratis. Former Mayor Elmer Cravalho on November 17, 1976 signed Revocable Permit No. S-5314. The effective date was July 1, 1976.

Subsequently, the Land Board at its meeting of March 24, 1977, under agenda Item F-1-d, approved the issuance of a Land License to the County of Maui, Department of Public Works for removal of cinder and dirt material. Staff was informed by the Attorney General's Office that the proper document should be a land license not a revocable permit. The license term was for a period of 20 years. Former Mayor Elmer Cravalho on September 27, 1977 signed the Land License. The effective date was July 6, 1976. On April 19, 1977, the County of Maui paid \$200 for the ad cost. The public notice was placed in the Honolulu Advertiser and Maui News on June 22, 29, 1977 and July 6, 1977.

The last evidence that the documentation was not completed was a 1979 memo generated by the Maui staff. It is unknown why the Department did not execute the Land License.

Then in 1994, Maui Land Division requested DAGS Survey to conduct a field survey and map out the 90 acre State property.

On March 24, 1999, by Land Patent Grant No. S-15925, the Department conveyed to DHHL a portion of Parcel 12 consisting of approximately 590.582 acres. The 90 acre State property was excluded from the conveyance.

Since 1976 the County continued to occupy the 90 acre State property and excavate cinder at the cinder pit without a document from the Department.

In October 2007, the County of Maui requested a new land license at gratis.

ANALYSIS:

The County of Maui will be using the materials for County road projects in the community and providing cover material for the Hana Landfill. The public's interest will be best served by issuing the land license to the County of Maui instead of selling a land license at a public auction.

The County of Maui is requesting the land license be for gratis. The County of Maui will be using the materials for County road projects in the community and providing cover material for the Hana Landfill. This is an important governmental service needed for the community.

The County of Maui has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

No agency or community comments were solicited.

There are no pertinent issues or concerns.

Staff is recommending the issuance of a management right-of-entry to the County of Maui. This is needed while staff processes the land license.

The proposed use has continued since 1976 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a land license to County of Maui, Department of Environmental Management covering the subject area for removal of cinder and soil purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current land license document form, as may be amended from time to time;

- B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an immediate right-of-entry permit to the County of Maui, Department of Environmental Management covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

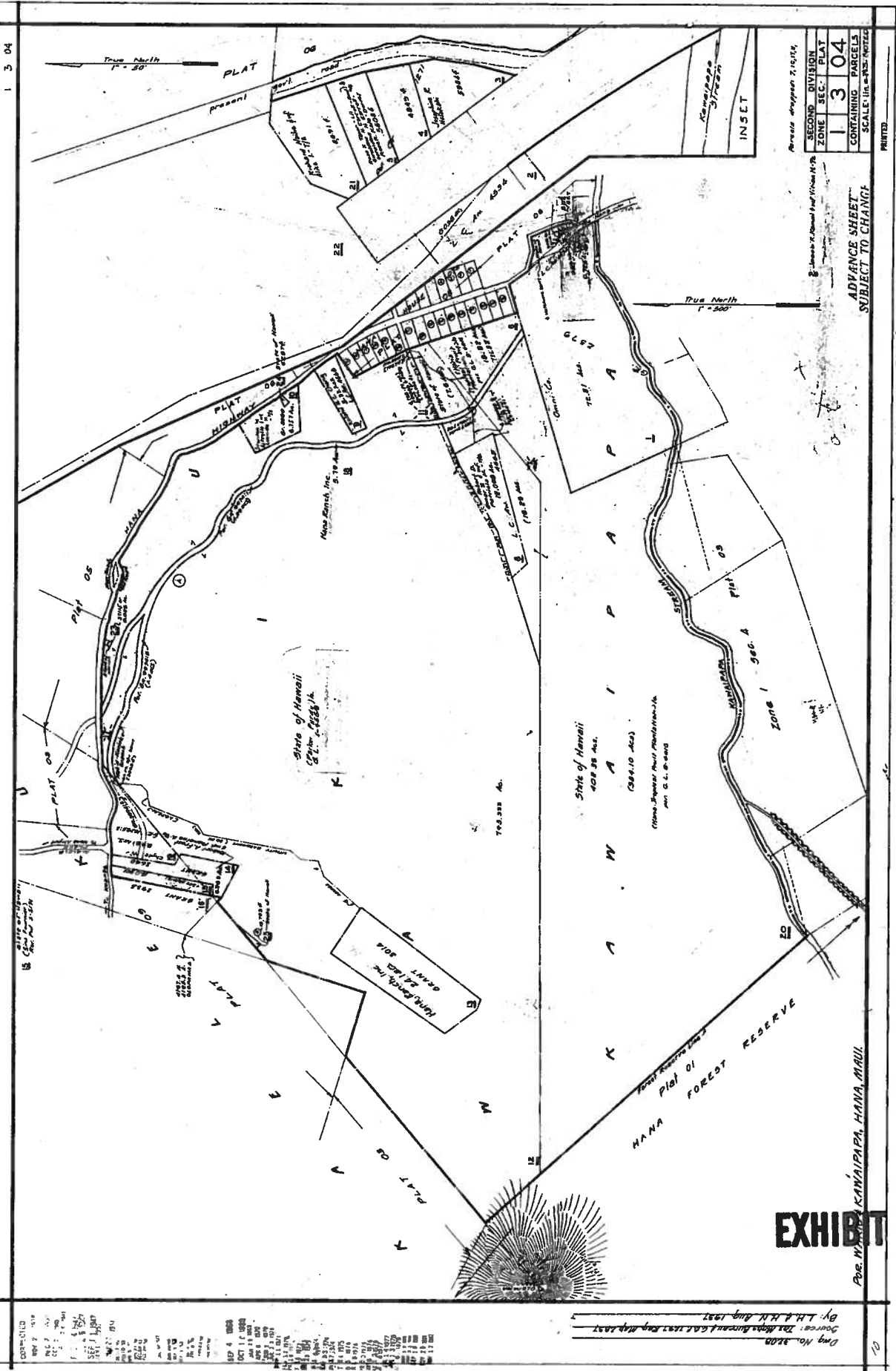
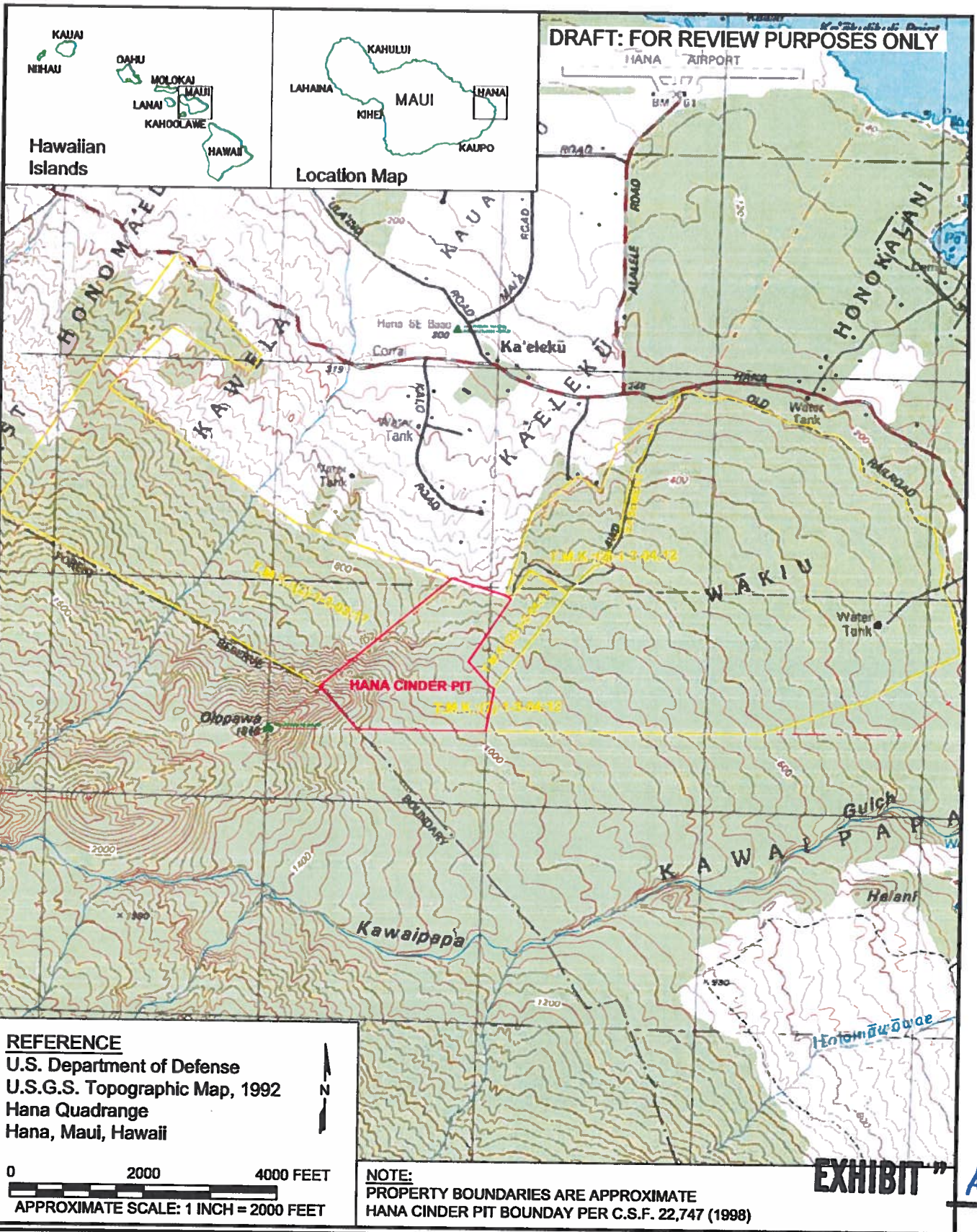


EXHIBIT "A"

Pos. HAWAII KONA/PAPA, HANA, MAUI

By: L.H.A.N. Aug 1937
Source: The Hawaiian Land Commission
Map No. 3208



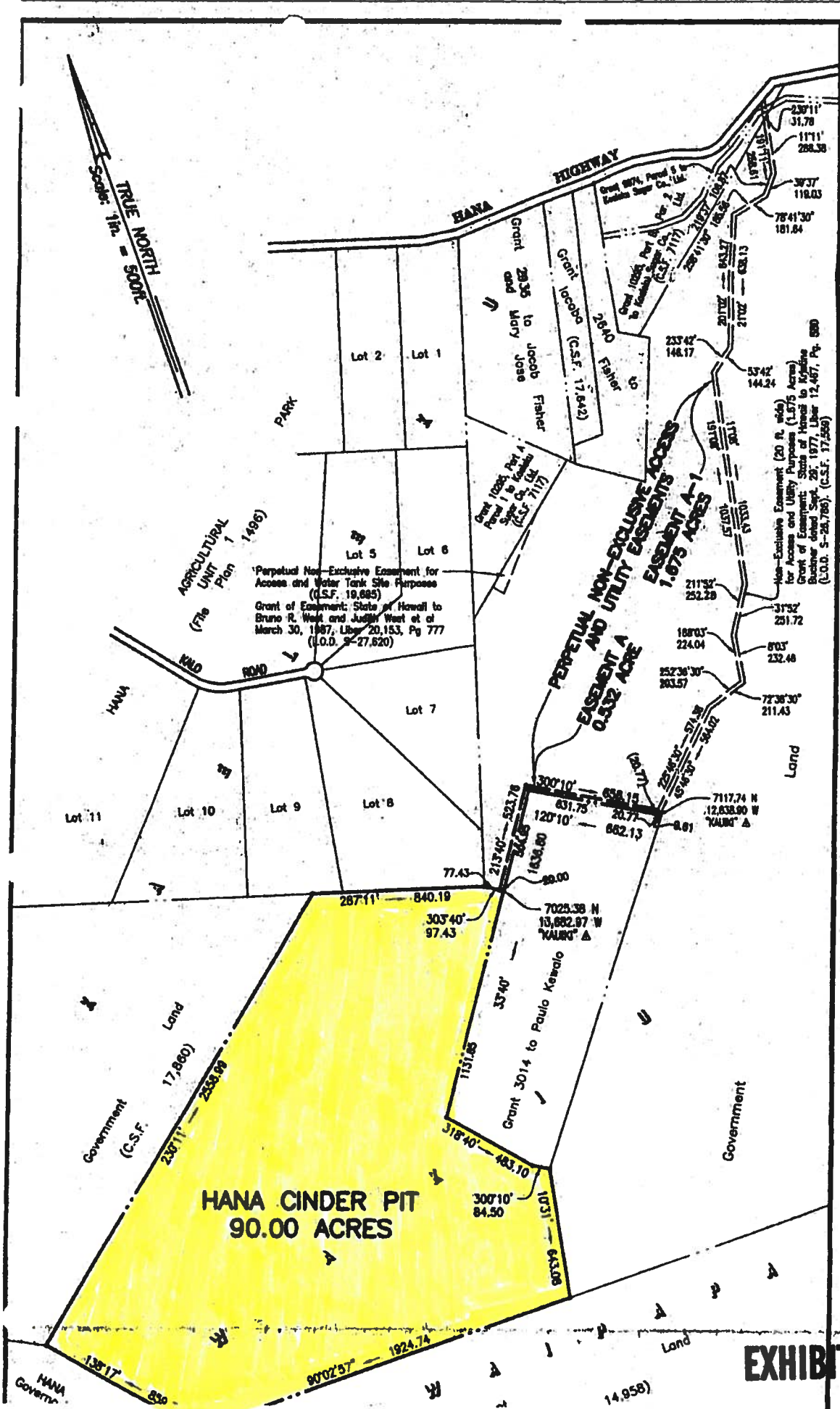


EXHIBIT "A"

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 1049
WAILUKU, HAWAII 96793

January 23, 1979

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

MEMORANDUM

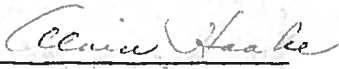
TO: Mr. James J. Detor

FROM: Alvin Haahe

SUBJECT: Land License to the County of Maui Covering the Removal
of Cinder/Dirt at Wakiu, Hana, Maui, TMK 1-3-04:Por. 12

Reference is made to the enclosed copy of my September 29, 1977 memorandum relative to the subject transaction.

Our file does not contain a copy of the executed Land License. If processing of the document has been completed, will you kindly forward one copy to us?


ALVIN HAAKE

MG:kr
Encl.

EXHIBIT "B"

September 29, 1977

MEMORANDUM

TO: Mr. James J. Dator

FROM: Alvin Haake

SUBJECT: Land License, County of Maui, Department of Public Works

At its meeting of March 24, 1977 under agenda Item F-1-d, the Board approved the issuance of a Land License to the County of Maui Department of Public Works for removal of cinder and dirt material at Wakiu, Hana, Maui, Hawaii, Tax Map Key 1-3-04:por. 12 of 90.0 acres, more or less, for road maintenance and landfill purposes on a gratis basis.

Submitted herewith are the following documents for further processing:

1. Five (5) sets of Land License executed documents.
2. A map delineating the 90.0 acres, more or less.
3. Copy of Liability Insurance Certificate.
4. Copy of Letter of Understanding between the County of Maui and Hana Ranch, Inc., relative to use, maintenance and repairs of the access road leading to Grant 3014.
5. Copy of Agreement between the County of Maui and Hana Ranch, Inc., of access rights over twenty (20)-foot-wide non-exclusive roadway to Grant 3014 in favor of Hana Ranch, Inc.

It is recommended that Parker Purdy and Alexander Bell, Jr., lessees of Tax Map Key 1-3-04:11, 12 and 17, be officially informed of the delineated 90.0 acres, more or less, and access road from Grant 3014 access road in favor of the County of Maui Department of Public Works.

The lessees recently indicated in their land utilization plan (forwarded to your office for review and approval on 9/21/77) to utilize approximately twenty-five (25) acres with five (5) acres to be planted by September 1978. Their report referred to the location as Area 2.

ALVIN HAAKE

Encls.

DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

LAND LICENSE NO. _____

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, COUNTY OF MAUI, DEPARTMENT OF PUBLIC WORKS,
whose business and mailing address is 200 South High Street,
of Wailuku County of Maui 96793, State of Hawaii,
(City and)
has applied to the Board of Land and Natural Resources, State of
Hawaii, for a Land License as hereinafter more particularly
described; and

WHEREAS, the Board has expressly found that the
disposition at public auction of such license is neither feasible
nor practical; and

WHEREAS, the Board may therefore issue such license
directly without recourse to public auction;

NOW, THEREFORE, the STATE OF HAWAII, by its Board
of Land and Natural Resources, hereinafter referred to as the
"LICENSOR", hereby grants license to COUNTY OF MAUI, DEPARTMENT
OF PUBLIC WORKS, whose business and mailing address is 200
South High Street,

of Wailuku County of Maui 96793, State of Hawaii,
(City and)
hereinafter referred to as the "LICENSEE", to enter and remove
and dirt material
cinders from that certain parcel of government land situate at
Wakiu, Hana, Maui, Hawaii, Tax Map Key 1-3-04:por. 12

State of Hawaii, hereinafter referred to as the 'License Area',
for the removal of cinders ^{and dirt material} from the Wakiu, Hana, Maui, Hawaii.

THE terms and conditions under which this license is
issued are as follows:

1. The Licensee shall pay, at the Department of
Land and Natural Resources, Honolulu, Hawaii,

from any of the activities or operations of the Licensee under this License.

4. This License is revocable and terminable at the will of the Board of Land and Natural Resources, or the Licensee, provided, that this License shall not extend beyond twenty (20) years ~~one (1) year~~ from July 6, 1977.
5. The Licensee shall remove from the said premises all equipment, machinery and improvements of every kind and nature within ten (10) days after receiving notice of termination of this License.
6. This License is non-transferable.
7. The Licensor reserves to itself the right to sell or grant to others similar rights or privileges; PROVIDED, HOWEVER, that the rights herein reserved shall not be exercised by the Licensor, or by any grantee of the Licensor in such a manner as to interfere unreasonably with the Licensee in the free use of said License Area for the purpose herein specified.
8. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.
9. That the Licensee, shall, procure, at his own cost and expense, and keep in force during the entire period of this License, with an

insurance company or companies acceptable to the Board, a policy or policies of public liability insurance for personal injury and property damage; said policy or policies to cover the entire License Area. With respect to proof of the Licensee's compliance with the provisions of this paragraph, the Licensee shall furnish the Board with a certificate showing such insurance to be initially in force and shall furnish a like certificate to contain or be accompanied by an undertaking of the insurer to notify the Board of any intention to cancel any such insurance prior to actual cancellation. Said policies shall name or otherwise cover the Licensors as an additional assured and the initial limits of said policies shall be for bodily injury, death, and damage to property, in such amount as shall be satisfactory to the Board.

10. The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments affecting the License Area.
11. The Licensors and its agents and employees shall at all times during the continuance of this License have access to all books and record of the Licensee relating to the material removed from the premises herein described for the purpose of ascertaining

and checking the amount payable to the Licenser hereunder.

12. That the Licensee shall furnish a certified ^{and dirt material} statement of all cinders/removed together with royalty payments for the preceding month to the Licenser no later than the 10th day of the succeeding month.
13. The Licensee shall not do or commit, or permit or suffer to be done any willful or voluntary waste, spoil, or destruction in and upon the premises or any part thereof; nor shall the Licensee cut down, or permit or suffer to be cut down, any trees growing or being grown, or which shall hereafter grow, in and upon the premises or any part thereof, except as special permission for the same may be given by the Department of Land and Natural Resources.
14. The Licensee shall restore the ground area, ^{and dirt material} caused by the removal of cinders/ to a condition satisfactory to the Department of Land and Natural Resources.
15. All removal of ^{and dirt material} cinders/shall be under the supervision of the Maui Land Agent or his authorized representative.
16. That all work incident to the removal of ^{and dirt material} cinders/shall be accomplished without cost to the Licenser.
17. The removal of ^{and dirt material} cinders/shall be restricted to weekdays only and will not be permitted on weekends and/or holidays.
18. The removal of ^{and dirt material} cinders/shall be removed in such a manner as to not create deep pits or depressions, such operations to

be conducted over as much area as is necessary to maintain a uniform appearing surface.

19. That the County of Maui submit a copy of an agreement with Hana Ranch, Inc., relative to use, maintenance and repair of the access road leading to Grant 3014.

IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused to seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed

this _____ day of _____, 19_____,
and _____,
the Licensee herein, has caused its corporate seal to be affixed
hereto and its corporate name to be signed by its proper officers
thereunto duly authorized by its Board of Directors, this _____
day of _____, 19_____, effective _____
_____.

STATE OF HAWAII

**APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON**

March 24, 1977

By: _____
Chairman and Member
Board of Land and
Natural Resources

And By: _____
Member
Board of Land and
Natural Resources

LICENSEE
COUNTY OF MAUI

By: *James F. Crummett*
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

James M. Kooaka
Deputy Corporation Counsel
County of Maui

And By: _____
Its

APPROVED AS TO FORM:

Deputy Attorney General
Dated: _____

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 27th day of September, 1977, before me appeared ELMER F. CRAVALHO, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of the County of Maui by authority of its Council, and the said ELMER F. CRAVALHO acknowledged the said instrument to be the free act and deed of the said County of Maui.

Aileen M. Umemori

Notary Public, Second Judicial Circuit
State of Hawaii

My commission expires 2/15/79

40029

CHARMAINE TAVARES
Mayor
CHERYL K. OKUMA, Esq.
Director
GREGG KRESGE
Deputy Director



DAVID TAYLOR, P.E.
Wastewater Reclamation Division
TRACY N. TAKAMINE, P.E.
Solid Waste Division

COUNTY OF MAUI
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT
2200 MAIN STREET, SUITE 175
WAILUKU, MAUI, HAWAII 96793

OCT 22 PM 2:50

OCT 17 4:40

& NATL
STATE

October 12, 2007

Laura H. Thielen, Chair
Board of Land and Natural Resources
1151 Punchbowl St.
Honolulu, HI 96813

Dear Ms. Thielen:

SUBJECT: Hana Landfill Cinder Pit Land License
TMK: 1-3-04: por. 12

The County of Maui, Department of Environmental Management, Solid Waste Division, requests a land license agreement to follow the land license of March 24, 1977 issued by the Board and Revocable Permit S-5312 issued in 1976.

The purpose of the land license is for the removal of dirt and cinder on a gratis basis for use in landfill cover and road maintenance. The County has to date extracted an average of 150 cubic yards a week with about half of the 90 acre cinder cone mined.

The Department wishes to work with you to obtain an agreement for continued use of the cinder material.

If you have any questions, please call Solid Waste Division Chief, Tracy Takamine, at 270-7881. Thank you for your consideration of our request.

RECEIVED
LAND DIVISION
2007 OCT 18 4:00 PM
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Sincerely,

Cheryl K. Okuma

CHERYL OKUMA, ESQ.
Director of Environmental Management

EXHIBIT "C"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 27, 2011

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of Direct Land License to the County of Maui, Department of Environmental Management for Removal of Cinder and Soil Purposes and Issuance of a Right-of-Entry to the County of Maui, Department of Environmental Management

Project / Reference No.: PSF 08MD-151

Project Location: Wakiu and Kawaipapa, Hana, Maui Tax Map Key: (2) 1-3-004:012

Project Description: County of Maui, Department of Environmental Management

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The County of Maui received Land Board approval on June 25, 1976 and March 24, 1977 for the removal of cinder and soil from the 90 acre State property. The County signed the Land License document and returned it to the Department. For whatever reason, the Land License document was never executed by the Chairperson. Since 1976 the County of Maui continued to occupy the 90 acre State property and excavated cinder from the cinder pit without a fully executed Land License document from the Department.

EXHIBIT "D"

The cinder has been used for County road projects in the community and cover material for the Hana Landfill.

Consulted Parties

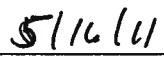
Not applicable

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Alla, Jr., Chairperson



Date